



the

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The Con-Con Question

The Illinois Constitution requires that voters have a chance, every 20 years, to say whether or not they want the State to hold a Constitutional Convention. Since voters were last asked this question 20 years ago, in 1988, it's time for them to vote on it again during the General Election on November 4. A convention will be held if either three-fifths of those voting on the question approve the idea, or if a majority of those voting in the General Election approve the idea.

If Illinoisans vote to hold a Con-Con, the Constitution dictates that the General Assembly appropriate money for the convention and a salary for convention delegates, who debate and vote on proposed constitutional changes. The General Assembly must also arrange an election so voters can choose two convention delegates from each Senatorial District. In addition, it sets the time and place of the Con-Con's first meeting, which must be within three months after the delegates' election. Its only requirements for delegates is that they be at least 21 years old, a U.S. citizen, and a resident of their Senatorial District for two years prior to the delegate election.

During a Con-Con, delegates can consider anything from minor changes to the Constitution to a complete rewrite of it. There are no limits in subject matter or changes, and there is no limit to how long a convention may meet. After a majority of delegates approve constitutional changes, Illinoisans vote on whether or not to accept those changes at an election held between two and six months after the conven-

tion's adjournment, according to the Constitution. A constitutional change becomes effective if a majority of those voting on the question approve it.

The last state Constitutional Convention was held in 1970; Illinois has used that Constitution ever since. In 1970, delegates were updating a Constitution that had been written in 1870. We had two Constitutions prior to that -- the first was written in

1818, when Illinois became a state, and the next was written in 1848. The format of Illinois' government -- three branches and both state and local governments, has never changed, but the "power" among them has, according to "Understanding the Illinois Constitution" (Frank Kopecky and Mary Sherman Harris, 2001). "The trend has been away from a government in which almost all power was held by the legislature."

Currently, labor, business, special interest groups, and others have formed groups to oppose and support a Con-Con. For example, The Alliance to Protect the Illinois Constitution, which opposes a convention, includes more

than two dozen organizations, such as the Illinois AFL-CIO, the Illinois Chamber of Commerce, the Illinois Federation of Teachers, the Illinois League of Women Voters, the Illinois Trial Lawyers Association, and the Illinois Manufacturers' Association.

Meanwhile the Illinois Citizens' Coalition, a political action committee founded by Bruno Behrend and John Bambenek, is joining Citizens for Fair Assessments and Taxes, Lt. Governor Patrick Quinn,



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former state treasurer Judy Baar Topinka, 48 legislators, including Rep. Jack Franks (D-Woodstock) and others in supporting the call for a Con-Con.

The many issues that could come up during a Constitutional Convention include:

- Same sex marriage
- Voter initiative and referendum
- Recall of elected officials
- School funding reform
- Merit selection of judges
- Legislative re-districting
- Abortion
- Tax reform
- State employee pension obligations
- Ethics standards
- Gun control
- Gubernatorial amendatory veto powers
- Term limits
- Gubernatorial pardons

For more information about the 2008 Constitutional Convention question, the last (1988) Con-Con referendum, the history of Constitutional Conventions, issues related to the current question of a convention, and other states' constitutional reforms, see this special Web site organized by the Illinois Legislative Reference Unit:

www.ilga.gov/commission/lru/ConConRef.html.

Ballot Problems

On October 1, the Chicago Bar Association, with the support of Illinois Lt. Governor Pat Quinn, took Illinois Secretary of State Jesse White and the Illinois State Board of Elections to court over what they considered inaccurate and misleading statements in the November 4 ballot about the Constitutional Convention question.

Cook County Circuit Judge Nathaniel R. Howse Jr. agreed with them. One of the statements at issue was an explanation on the ballot telling voters that not voting on the Constitutional Convention question equaled a "no" vote. This is inaccurate. If a voter doesn't vote on the question, it is not counted as a vote. The judge ruled that another sentence, which said that Illinoisans rejected the call for a Constitutional Convention the last time they voted on it (in 1988), was misleading.

As a result, the judge ordered on October 3 that

every citizen who votes must receive a notice stating that the ballot's "Notice" and "Explanation of Proposed Call" are "inaccurate and incorrect and should be ignored."

Pros and Cons

Some Illinois leaders have been active in debating for or against a Constitutional Convention. Among those are Lt. Governor Pat Quinn, who supports a Con-Con, and former Comptroller and Senator Dawn Clark Netsch, who opposes it. Here are summaries of their views, based on interviews with each.

Pat Quinn is the Lt. Governor of Illinois and a former state treasurer. He successfully lead a movement in 1980 to add the "Cutback Amendment" to the state Constitution, which reduced the number of Illinois' state representatives from three to two per district.



Illinois Lt. Governor Pat Quinn. Photo courtesy of the Lt. Governor's Office.

"There are three compelling reasons why I support a Constitutional Convention: to give the voters recall and initiative, to establish ethics standards, and to ensure a fair tax system. First, we need recall (voters' ability to vote an elected official out of office) to keep elected officials on their toes 365 days a year, not just every four years at Election Day.

I also believe in initiative (in which voters can petition state government to either debate a particular topic or hold a public election on a statute or constitutional amendment). This is an issue that, historically, governors and legislators have not favored. Realistically, the only way for the voters, who, I think, favor initiative and referendum by a wide margin, can get this issue fairly debated is in a Constitutional Convention. We've tried for three to four decades to convince legislators to even have hearings on this matter and even though the polls show overwhelming support for it, those in power say, 'So what?' The key issue is empowering voters in the 21st century to strengthen their vote, not to strengthen the power structure as it's currently constituted. The solution to Illinois' current problems is more democracy, more

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listening to the voters, and that's why recall and initiative are so important.

Another major concern is ethics standards. I believe the only way to deal with corruption is to have tough, no-nonsense ethics standards in the Illinois Constitution. Legislators, on their own, are not going to enact the tough standards voters want. Insiders are not going to reform themselves and I think that can only be done by a convention.

The way we fund our schools is another reason I support a con-con. The 1970 Constitution says the state has the primary responsibility for funding public education. The legislature and courts have interpreted that to be advisory, not mandatory. Most people think it should be mandatory. There's only one way to intervene and that's with a convention, to require the Constitution's words be adhered. The Illinois tax system is fundamentally unfair to ordinary people and is not getting the job done for funding education, it relies too much on property tax.

There are other issues, too, such as the amendatory veto issue, where the governor has taken such an aggressive position about his power. It raises questions about whether or not there is a separation of powers and three branches of government in Illinois.

Another is legislative re-districting, which will occur in 2011, after the U.S. Census. Do we want a system in Illinois where politicians pick their own voters, that's the current system, or do we want a system where voters pick the politicians? I think that's what the people wanted when they ratified this constitution 38 years ago. You could remedy that with a Constitutional Convention.

(Convention opponents say they worry that Illinois' divisive politics would create a divisive convention atmosphere.) If you don't have one when things are going well, and you don't have one when things are going bad, when do you have one? I think it's up to the voters to tell us what they want.

In 1970 the legislature had the delegates elected on a non-partisan basis. Politicians do understand election returns. If they don't follow that precedent, they're really asking for trouble from the public. And I think that's the system that Illinois will follow if the people vote for a convention.

The Con-Con vote on November 4 is basically a two by four that the voters of Illinois can wield against the dysfunction of state government, to protest against the behavior of Governor Blagojevich. It's a protest against the gridlock that exists in Illinois government and a message to Springfield that the people mean business. It's important to stress that voters have the final say (since they will vote on measures convention delegates approve). I think it's a pretty healthy way of resolving problems that have existed for four decades."



Dawn Clark Netsch, photo courtesy of the Northwestern University School of Law.

Dawn Clark Netsch, former state Senator and Comptroller, is Professor of Law Emerita at Northwestern University School of Law. She was a delegate at the 1970 Constitutional Convention.

"In my judgment a full blown Constitutional Convention (Con-Con) is not needed and could well be a negative development.

Once a convention is convened, the entire Constitution is open to revision. It does not mean that all of it will be rewritten of course, but the delegates cannot be limited in what they choose to revise. We have a workable, modern Constitution, considered a model by many states. It includes what is probably the strongest Bill of Rights of any state Constitution in the country. I would really hate to see the Bill of Rights opened up to some of the "hot button" social issues that so dominate our politics today.

Are there individual provisions that we would like to see changed? Probably many of us have a candidate for revision. Mine would include eliminating the partisan (and increasingly costly and ugly) election of judges and substituting the "merit selection" system (often called the Missouri Plan). But I have no reason to believe that the convention would adopt this proposal. By the same token, I would eliminate the requirement that the state income tax be at a flat rate, but it is just as likely that there will be pressure to further restrict the state's flexibility in raising revenue by imposing caps or requiring an extraordinary vote

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to change a tax measure. My point is that many proponents assume that their wish list will be adopted and that a Con-Con will quickly and miraculously solve the state's problems.

I don't think so. The government in Springfield today is dysfunctional and we are all frustrated. But the crisis is not constitutional. There is nothing in the Constitution which has stood in the way of resolving any of the issues we've been reading about — whether it is school funding or ethics or a capital plan. There is a crisis of leadership in Springfield and an unwillingness to bite the bullet and make tough decisions, and they are tough decisions. But you can't write a constitutional provision to resolve that.

Moreover, I doubt whether there is constitutional language which will resolve those particular issues. For example, on reforming school funding we tried in 1970 to frame a constitutional provision that would embody the state's responsibility for providing and funding a quality education for all children, even to the point of specifying a particular percentage that the state must provide. That didn't work and in the end we stated a goal and a mandate that recognized that it is still the elected representatives who must implement and appropriate.

Another matter makes me question the wisdom of holding a Constitutional Convention today. The atmosphere is very different today than in 1970. At that time there was widespread, almost universal support for revising the

100-year-old, "horse and buggy" Constitution. There were controversial issues and strong disagreements but, compared to today, a relatively calm and civil atmosphere. Today the political atmosphere is intensely partisan, almost poisonous. My concern is that the negative atmosphere will carry over into the convention and even into the preparation for the convention — because it is the same governor and legislature whose distrust of one another has helped to produce gridlock in Springfield who get to set the ground rules for the convention — whether delegates are elected on a partisan or nonpartisan basis, whether legislators and other public officials can serve as delegates, how much delegates and staff are paid, where and when the convention will meet, etc. The politics of Springfield may become the politics of Con-Con.

To this I would add another difference between 1970 and today: money and special interests. I would expect a great deal of money to be spent today both in the delegate elections, and in the convention itself, by a wide range of "special interests" (both social and economic), almost all of whom are better organized, better funded, and more aggressive than they were in 1970. That's their right, but it does not always produce the most responsible result.

On balance, I believe that we would serve our state and our citizens better by focusing on individual issues through the amendment process which is difficult, but not impossible (we have approved 10 of 18 amendments submitted since 1970). Beyond that, I would hope that we spend our political energies on electing courageous and accountable public officials."



Transitions

In early September, **Rep. Jim Watson**, a Jacksonville Republican, returned from Iraq where he served as a Marine Reservist. He left for Iraq in February. While there, Rep. Watson helped officials in the Anbar Province establish a government. For a while he was embedded with the Vice Chairman of the Anbar Provincial Council. This was Rep. Watson's second tour to Iraq, he served there during the Gulf War as well.

